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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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Paul E. Newson

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PHILADELPHIA, PA 19104-2891

EXAMINER

SWEARINGEN, JEFFREY R

ART UNIT

PAPER NUMBER

2445

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PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 09/800,394	<b>Applicant(s)</b> NEWSON ET AL.	
	<b>Examiner</b> Jeffrey R. Swearingen	<b>Art Unit</b> 2445	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 06 January 2009.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-3, 5-8 and 64-70 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 70 is/are allowed.
- 6) ☒ Claim(s) 1-3, 5-8 and 64-69 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)            | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | Paper No(s)/Mail Date. _____                                      |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>20090121</u> .  | 6) <input type="checkbox"/> Other: _____                          |

## **DETAILED ACTION**

### ***Continued Examination Under 37 CFR 1.114***

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 1/6/09 has been entered.

### ***Response to Arguments***

2. Applicant's arguments with respect to claims 1-8 and 64-69 have been considered but are moot in view of the new ground(s) of rejection.

### ***Allowable Subject Matter***

3. Claim 70 is allowed.

4. The following is a statement of reasons for the indication of allowable subject matter: Applicant's limitation wherein the session/transport layer and the audio layer each exposes a respective application programming interface (API) to the other layer, and wherein the two layers establish a link between them by providing each other with pointers to their respective APIs is not taught or suggested by the prior art of record.

### ***Claim Rejections - 35 USC § 103***

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the

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invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 1-3, 5-8 and 64-69 are rejected under 35 U.S.C. 103(a) as being unpatentable over Heredia (US 6,241,612) in view of Ulrich et al. (US 5,466,200).

7. In regard to claim 1, Heredia taught a method of transmitting audio signals between players in an internet game. Heredia, column 3, lines 50-60. Heredia allowed any number of client computers to be coupled via network to a server computer. Heredia, column 3, lines 61-67. Heredia also allowed for peer-to-peer operation of the game, where no server is required. Heredia, column 7, lines 44-57. Heredia allowed the audio data to be transmitted to specific players. Heredia, column 6, lines 33-49. Therefore, Heredia taught sending data from a first device to a destination device via a network to which a plurality of second devices are also connected, including audio and data where the topology of the data session (all players) is different from the topology of the audio (audio to a specific player).

8. Heredia failed to disclose addressing the first data package to said destination device in accordance with the session topology of said audio session of said audio layer; and sending said first data package to said destination device via said data session of said session/transport layer, e.g. directly transmitting the audio from computer to computer without passing through the server. Ulrich taught a interactive exercise system which could be any number of interactive programs (Ulrich, column 5, lines 31-46). Ulrich directly suggests the use of video games in column 5, line 43. Ulrich allowed for a voice signal to be sent directly between users of the Ulrich system. Ulrich, column 8, lines 42-64. This is the addressing of the data in accordance with the

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session topology of said audio session of said audio layer and sending said first data package to said destination device via said data session of said session/transport layer.

The presence of a header is inherent to the addressing of the package for direct transport.

9. It would have been obvious to one of ordinary skill in the art at the time of invention to combine the multiplayer audio capabilities of the Heredia video game system with the multiplayer audio capabilities of the Ulrich video game system to allow audio data designated for a specific player to be directly transmitted to that specific player.

10. In regard to claim 2, Heredia (column 4, line 49) and Ulrich (column 5, line 30) disclosed capturing said first data using said microphone.

11. In regard to claim 3, Ulrich further disclosed said destination device is not one of said second devices to which said first data can be directly addressed in said data session of said session/transport layer, and wherein said sending act comprises appending a header to said first data package which indicates that said first data package is to be delivered to said destination device, and sending said first data package to a host device in said session/transport layer different from said destination device, said host device being a member of the first set. Ulrich further supported sending all data through a large scale broadcast network using a hub processor in column 9, lines 1-25. The central hub processor is the host device in the session/transport layer different from the destination device, which is a member of the first set.

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12. In regard to claim 5, Heredia further disclosed in said host device, receiving a second data package from a second device, said data package comprising (a) second data and (b) a header which indicates that said data package is to be delivered to said destination device, and said host device sending to said destination device a mixed stream comprising said first data and said second data. The data in Heredia is mixed and retransmitted with game data to client computers in column 4, line 63 - column 5, line 15.

13. In regard to claim 6, Ulrich further disclosed in said host device, receiving a second data package from a second device, said data package comprising (a) second data and (b) a header which indicates that said data package is to be delivered to said destination device; and said host device sending said first and second data packages separately to said destination device. Ulrich allowed for a voice signal to be sent directly between users of the Ulrich system. Ulrich, column 8, lines 42-64. The game signal is still being sent to the server; therefore the first and second data packages are sent separately to the destination device.

14. In regard to claim 7, Heredia disclosed the first data package is sent using non-guaranteed delivery. Heredia supports both real time and near real time transmission of data. Heredia, column 5, lines 13-15. Real time transmission of audio data requires occasional dropping of audio packets in cases of network congestion, which is non-guaranteed delivery.

15. Claim 8 is substantially the same as claim 1.

16. Claim 64 is substantially the same as claim 2.

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17. Claims 65 and 66 are substantially the same as claim 3.
18. Claim 67 is substantially the same as claim 5.
19. Claim 68 is substantially the same as claim 6.
20. Claim 69 is substantially the same as claim 7.

***Conclusion***

21. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

22. Porter US 6,434,599

23. Abato et al. US 6,513,069

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jeffrey R. Swearingen whose telephone number is (571)272-3921. The examiner can normally be reached on M-F 8:30-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Larry Donaghue can be reached on 571-272-3933. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Jeffrey R. Swearingen  
Examiner  
Art Unit 2445

/J. R. S./  
Examiner, Art Unit 2445  
/Larry D Donaghue/  
Primary Examiner, Art Unit 2454